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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/010,269	12/06/2001	James Richard Lines	86038.000090	5578
23387	7590	03/30/2004	EXAMINER	
Stephen B. Salai, Esq. Harter, Secrest & Emery LLP 1600 Bausch & Lomb Place Rochester, NY 14604-2711			MCKINNON, TERRELL L	
		ART UNIT	PAPER NUMBER	
		3743		

DATE MAILED: 03/30/2004

*J*

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Offic Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	10/010,269	LINES ET AL.
	<b>Examiner</b>	<b>Art Unit</b>
	Terrell L McKinnon	3743

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 30 January 2004.  
 2a) This action is FINAL.                    2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-15 is/are pending in the application.  
 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
 5) Claim(s) 9-11 is/are allowed.  
 6) Claim(s) 7,8 and 11-13 is/are rejected.  
 7) Claim(s) 2-6, 14 and 15 is/are objected to.  
 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on 06 December 2001 is/are: a) accepted or b) objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
|  | 6) <input type="checkbox"/> Other: _____                                    |

## DETAILED ACTION

Receipt is acknowledged of applicant's amendment filed January 30, 2004.

Claims 1-15 are pending and an action on the merits is as follows.

Applicant's arguments with respect to claims 1, 7, 8, 12 and 13 have been considered but are moot in view of the new ground of rejection.

### ***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1, 7, 8, 12 and 13 are rejected under 35 U.S.C. 102(b) as being anticipated by Angus (U.S. 3,653,221).

Augus discloses a heat exchanger comprising:

- a heat exchanger including a heat transfer wall (A1-A3 and B1-B3) having a first surface and an opposite second surface;
- passing a cooled fluid in contact with the first surface of the heat transfer wall and passing a cooling fluid in contact with the second surface of the heat transfer wall (column 2, lines 42-49);
- directly monitoring (83 and 96) the temperature of the first surface of the heat transfer wall (column 2, lines 18-24; and column 7, lines 1-10);

- adjusting the flow of one of the cooled fluid and cooling fluid in response to the temperature of the first surface (column 2, lines 41-43); wherein
- adjusting the flow of one of the cooled fluid and cooling fluid is accomplished in response to the temperature of the first surface decreasing at a rate exceeding a predetermined value;
- monitoring is accomplished by a thermocouple (83 and 96) fixed directly to the first surface; and
- a housing (33) containing flow paths (43 and 46) for a cooled fluid and a cooling fluid, the housing having a heat transfer wall (coils) with a first surface for contacting the cooled fluid and a second surface for contacting the cooling fluid.

***Allowable Subject Matter***

3. Claims 9-11 are allowed.
4. Claims 2-6, 14 and 15 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The following references are cited for disclosing related limitations of the applicant's claimed and disclosed invention. Kirschner et al, Thorsen

et al, Haul, J. L. Lorenz and E. H. Olson.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Terrell L Mckinnon whose telephone number is 703-305-0059. The examiner can normally be reached on Monday -Thursday and every other Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Henry Bennett can be reached on 308-0101. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1148.



Terrell L Mckinnon  
Primary Examiner  
Art Unit 3743  
March 21, 2004